FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2416 OF 2006 IN F.A.ST.NO.10416/2006

Vijay M. Pendhare. ..Applicant.
Vs.
Ashok M. Shevkar. ..Respondent.

OFFICE NOTES, OFFICE MEMORANDUM OF CORAM, APPEARANCES, COURT'S ORDERS OR DIRECTIONS AND REGISTRAR'S ORDERS.	COURT'S OR JUDGES ORDERS

Mr. Sachin Punde for the Applicant.
Mr.Sachin Chavan for the Respondent No.1.

CORAM : A.S. OKA, J.
DATE : SEPTEMBER 12, 2007.

P.C.

1. Heard Advocates appearing for the parties. This Application for condonation of delay is strongly opposed by the Advocate for the respondent by pointing out that there is a gross and inordinate delay of 3 years and 139 days. He states that the impugned decree has been executed. He, therefore, submits that the application for condonation of delay should not be entertained.

2. Perusal of the application shows that the impugned decree was passed on 31st August, 2002. According to the case of the applicant, he came to know about the passing of the said decree on 9th

April,2003. On 27th June, 2003 the applicant made an application before the Trial Court for setting aside the impugned decree on the ground that the same was an ex-parte decree. There was a delay in filing the said application and therefore, an application for condonation of delay was filed. The said application for condonation of delay was rejected by an order dated 4th November, 2004. The Applicant preferred an appeal before the Court of Additional District Judge at Baramati for challenging the aforesaid order of the Trial Court. On 15th December,2005 the said appeal was dismissed as not maintainable. It is stated that after dismissal of the said appeal the applicant received the legal advice that the proper remedy for challenging the impugned decree was by way of preferring an appeal to this Court. Accordingly, the present appeal has been filed on 6th April,2006.

3. Considering the aforesaid facts, there is an explanation for delay of 1314-days. The applicant was prosecuting the proceedings for challenging the decree. The fact that the decree has been executed is no ground to reject the application for condonation of delay if a case for condonation of delay is otherwise made out.

4. Considering the aforesaid factual aspects though the application for condonation of delay deserves to be allowed, considering the length of delay, the respondents will have to be compensated by ordering the payment of costs.

5. Accordingly, Rule is made absolute in terms of prayer clause (a) subject to payment of costs quantified at Rs.5000/- to be paid by the applicant to the respondents within a period of six weeks from today. Payment of costs will be a condition precedent. If the amount of costs is neither paid or deposited with the Trial Court within stipulated time, this application will stand dismissed without further reference to the court.

(A.S. OKA, J.)